

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3  
4 UNITED STATES OF AMERICA, )

No. 14-CR-00129 WJ

5 Plaintiff, )

6 vs. )

Pete V. Domenici U.S. Courthouse  
Bonito Courtroom

7 MICHAEL DAMEON BLACKBURN, )

Albuquerque, New Mexico

Monday, August 29, 2016

8 Defendant. )

1:30 P.M.

9  
10 TRANSCRIPT OF PROCEEDINGS  
11 SENTENCING HEARING, PART 1  
12 BEFORE THE HONORABLE WILLIAM P. JOHNSON  
UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

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1 (In Open Court at 1:43 P.M.)

2 THE COURT: All right. Let me call next United  
3 States vs. Michael D. Blackburn, 14-cr-129.

4 would counsel enter their appearances for the record.

5 MS. ONG: Good afternoon, Your Honor. Marisa Ong on  
6 behalf of the United States.

7 MS. HENDERSON: Good afternoon, Your Honor. Shammara  
8 Henderson on behalf of the United States.

9 MS. KATZE: Margaret Katze for Mr. Blackburn. Good  
10 afternoon, Your Honor.

11 THE COURT: As a preliminary matter, Ms. Katze, you  
12 reviewed the Presentence Report with the Defendant?

13 MS. KATZE: I did.

14 THE COURT: There are a number of legal issues and  
15 arguments that are raised, so I think what I'm going to do is  
16 go ahead and hear argument on that. So, Mr. Blackburn, you can  
17 go ahead and just have a seat back at the defense table.

18 MS. KATZE: Your Honor, so right now we're just going  
19 to do the legal arguments?

20 THE COURT: Yes.

21 MS. KATZE: Okay. Just briefly, because I believe  
22 that I addressed these in my objections to the Presentence  
23 Report, our first objection was to the enhancements under  
24 §2G2.2(b)(5) and §4B1.5(b)(1). It is our position that --

25 THE COURT: And that's Paragraph, I think, 64 of the

1 Presentence Report, and then 97 of the --

2 MS. KATZE: Yes, I think you're correct, Your Honor.

3 So, it's our position that it's essentially double  
4 counting. I know that the Government in their Sentencing Memo  
5 argued that the two enhancements serve different purposes, but  
6 the truth is, they're both triggered by the exact same conduct,  
7 and both enhancements punishing the exact same conduct. So I  
8 think that that's unfair double counting to apply both of those  
9 enhancements.

10 And then our other objection was to the enhancement  
11 of five levels based on distribution of those photographs per  
12 receipt or expectation of receipt of a thing of value. Merely  
13 because somebody exchanges those photographs doesn't  
14 automatically make it for a thing of value or an expectation  
15 for a thing of value. Certainly in this case, Mr. Blackburn  
16 did it for other reasons. We set forth what we think are  
17 certainly more plausible reasons for the exchange, and  
18 therefore, the five levels would not be appropriate.

19 So those are the objections to the Presentence Report  
20 that we made. Other than that, Your Honor, there's basically a  
21 request for a departure, a variance argument, and an argument  
22 against the restitution. Do you want to hear any of those at  
23 this time, or shall we have the Government respond to those two  
24 objections?

25 THE COURT: You know, I'll hear them all at once, so

1 you may continue. But I did have a question.

2           Again, bearing in mind what the U.S. Supreme Court  
3 has said, that the starting place is to arrive at a correctly  
4 calculated guideline sentence, but as far as the guideline  
5 sentence, even if I sustain your objection to the five-level  
6 enhancement in Paragraph 64, that five levels basically for a  
7 pattern, and then sustain the objection in Paragraph 97 for  
8 that five levels, then you are -- I mean, that's ten levels  
9 that are coming off. But you're still, in terms of a guideline  
10 sentence, an advisory guideline sentence, you're still at an  
11 offense level of 43, which under the Sentencing Guidelines is  
12 life in prison.

13           MS. KATZE: I recognize that, Your Honor.

14           THE COURT: I just wanted to make sure --

15           MS. KATZE: No, I recognize it, but let me explain to  
16 you why I still think it's important.

17           First of all, as the Court said, we start from a  
18 correctly calculated guideline, so I think it's important to  
19 correctly calculate the guidelines.

20           Secondly, I am asking for a variance and a departure,  
21 and I imagine psychologically asking the Court to vary or  
22 depart from a Level 53 is different than asking the Court to  
23 depart from a 43, just in fairness to the way we perceive  
24 things. So I do think it's important to address that, and then  
25 to move from there.

1           So, do you want me to address the issue of  
2 restitution?

3           THE COURT: whatever order you want to go in.

4           MS. KATZE: Okay. I'm going to skip to the  
5 restitution order, or the restitution issue.

6           Originally my objection addressed restitution, two  
7 different types of restitution. Probation was originally  
8 requesting restitution for apparently individuals identified  
9 from other series who I guess have received civil judgments,  
10 and generally it's been my experience that then they have  
11 attorneys that represent them that try to collect on those  
12 cases.

13           And then in the Presentence Report, Probation  
14 indicated that there had been no requests for restitution on  
15 behalf of M.M. and A.M. So in my Sentencing Memo, I argued  
16 against the restitution as set out by Probation. Clearly I  
17 think under Paroline, it would affect that decision.

18           However, then apparently the Government contacted  
19 Probation and told Probation that -- or Probation maybe  
20 themselves contacted the victims of those other series. In any  
21 case, I believe that it came from the Government saying that  
22 the victims in those cases did not wish to seek restitution  
23 anymore at this point, and that they believed that any  
24 restitution that would be ordered by the Court should go to  
25 A.M. and M.M. And if that is correct, that that is the

1 Government's position now, I won't address the issue. I won't  
2 address any further the issue of the restitution originally  
3 requested by Probation in the Presentence Report, which I did  
4 address in my Sentencing Memo.

5           So I think where that leaves us now is the issue of  
6 restitution for M.M. and A.M. And in Probation's Addendum to  
7 the Sentencing Memorandum where they address the fact that the  
8 Government has indicated that the victims of those other series  
9 are saying restitution should go to A.M. and M.M., Probation  
10 continues to indicate that they have not received any requests  
11 for restitution on behalf of M.M. and A.M. And so my position  
12 continues to be the same as it is in my Sentencing Memorandum.

13           I recognize that clearly the Court is authorized to  
14 issue restitution in this case. I absolutely recognize that,  
15 and I'm not arguing that the Court doesn't have authority to do  
16 that. But what I am arguing is that if we look at the statute  
17 and we look at the cases related to the statute, basically the  
18 Government's request is completely speculative.

19           The Government has provided no documentation, no  
20 reports, nothing for the Court to help the Court say that there  
21 is something specifically victim related. And the Tenth  
22 Circuit was clear in saying that a District Court must support  
23 any restitution order with findings of fact on the record. And  
24 we don't have that. That has not been provided to us.

25           The Government is merely asking the Court -- based on

1 an article from the International Society for Prevention of  
2 Child Abuse & Neglect Journal, they came up with this finding  
3 that maybe over the lifetime of an individual who has been  
4 abused, that it costs \$210,000, and they go through the  
5 breakdown of that. And I address some of that specifically in  
6 my Sentencing Memo.

7           For example, they talk about costs to pay for  
8 criminal justice costs, and clearly the costs, using that  
9 example, clearly those costs will only arise if the children,  
10 in fact, get in trouble in the criminal justice system. So  
11 it's completely speculative, and that's exactly what the Tenth  
12 Circuit has said we can't do. And that's not what the statute  
13 itself says.

14           So I think that especially in this situation -- in  
15 Paroline, the Supreme Court case, it says that the Government  
16 has the burden of demonstrating the victim's loss. It's very  
17 specific. And I understand they're very young children, and at  
18 this point they might not be able to -- there might not be  
19 something. But I think that any restitution order has to be,  
20 not speculative, but has to be -- again, as I said, for the  
21 Court to -- it has to be based on findings of fact in the  
22 record. So the Government has to provide the Court with some  
23 kind of factual basis, some kind of record to meet their  
24 burden, and it has to be specifically victim related. So  
25 that's the issue that I have on the restitution issue.



1 I guess the final two issues that -- if the Court  
2 wants at this point the Government to, because those are the  
3 more legally related arguments, if the Court wishes the  
4 Government to address those, then I can talk about variance.

5 THE COURT: Sure, that makes sense.

6 MS. ONG: Good afternoon, Your Honor.

7 Regarding Ms. Katze's first objection to the PSR that  
8 deals with the distribution of a thing of value, I actually  
9 brought a case for the Court to consider, and I have provided  
10 defense counsel with a copy. If I could have permission to  
11 publish that to the Court now.

12 THE COURT: Sure.

13 MS. ONG: This is United States v. Geiner, I believe  
14 is how you pronounce it. It's 498 F.3d 1104. It's a published  
15 case from 2007 from the Tenth Circuit. I believe that this is  
16 the seminal case out of the Tenth Circuit on this issue.

17 Now, in Geiner, we were dealing with a Defendant who  
18 had a file-sharing program, and I think that the Court, just  
19 from my past dealings with the Court, I think the Court is  
20 familiar with that. But those are basically programs such as  
21 Limewire, where you're downloading child pornography and then  
22 you're making child pornography files available. And what the  
23 Court said here is, there's an issue of whether or not the  
24 Defendant actually knows that he is distributing the child  
25 porn.

1           what they ultimately found in Geiner was that the  
2 five-level enhancement was properly applied even when the only  
3 benefit that the Defendant was getting was a faster internet  
4 connection. And I'd just like to direct the Court to Page 1111  
5 through 1112. That's Page 8.

6           Basically, Ms. Katze was arguing that exchanging  
7 child pornography for other child pornography doesn't  
8 constitute a thing of value. There the Tenth Circuit  
9 explicitly said: "A thing of value need not have objective  
10 value, but may be something of value to Defendant as the  
11 example in the application note to United States Sentencing  
12 Guideline Section 2G2.2(b)(3)(B) illustrates. For example, in  
13 a case involving the bartering of child pornographic material,  
14 the thing of value is the child pornographic material received  
15 in exchange for other child pornographic material bartered in  
16 consideration for the material received."

17           I think here in the record we have ample support for  
18 that, and I'd like to direct the Court's attention to the  
19 Defendant's videotaped confession that was admitted as an  
20 exhibit at the suppression hearing. The actual videotaped  
21 interview was Exhibit 36, and the transcript of the interview  
22 is Exhibit 38. Those are already in the record.

23           And if the Court recalls, as Probation pointed out in  
24 their Addendum, during that interview the Defendant explicitly  
25 said that he was e-mailing with other people, sending them

1 child pornography, and that they were basically trading images.  
2 He would send them an image, and then they would send him an  
3 image. So I think we have ample support here. There's no  
4 issue of whether or not the Defendant actually knew he was  
5 distributing the child porn. These are direct e-mails that  
6 happened.

7 So our position is that that enhancement was  
8 correctly applied, and I would ask the Court to rely basically  
9 on the Defendant's own admission as to what he was doing to  
10 overrule that objection.

11 Does the Court have any questions about that  
12 enhancement?

13 THE COURT: No.

14 MS. ONG: All right. Moving on to defense counsel's  
15 second objection, that deals with the double counting that the  
16 Court had just pointed out. I have another case that I've  
17 cited in my Sentencing Memo. I provided defense counsel with a  
18 copy, and I have a copy for the Court.

19 This case is United States v. Dowell. It's a case  
20 out of the Fourth Circuit. This issue has not been raised  
21 within the Tenth Circuit, but as I laid out in my Sentencing  
22 Memorandum, every single court to have looked at this issue has  
23 held that it is not impermissible double counting to have the  
24 pattern of abuse enhancement from §2G -- I don't remember the  
25 exact -- let's see here. §2G2.2(b)(5), and the enhancement

1 under §4B1.5.

2           Basically, I think the Court can rely on the Fourth  
3 Circuit's rationale in the Dowell case. There what they said  
4 is, it's not impermissible double counting because each  
5 enhancement serves completely different sentencing goals.  
6 Basically, what they said there is that §2G2.2(b)(5) provides  
7 an enhancement per offense specific conduct as it relates to a  
8 defendant's child pornography offenses, whereas §4B1.5(b)(1) is  
9 located in Chapter 4 of the Guidelines under the provisions  
10 covering career offenders and criminal livelihood.

11           The Court went on to say: "This placement is  
12 explained by the background commentary which states that  
13 §4B1.5(b)(1) applies to offenders who present a continuing  
14 danger to the public and is derived from Congressional  
15 directives to ensure lengthy incarceration for offenders who  
16 engage in a pattern of activity involving the sexual abuse and  
17 exploitation of a minor."

18           As I stated, all of the cases that I was able to find  
19 that address this issue are cited in my brief. Every court to  
20 have looked at this issue has all decided that it is not  
21 impermissible double counting.

22           As the Court brought up with Ms. Katze, even if the  
23 Court were to sustain both of the Defendant's objections, he's  
24 still at a total offense level of 43. His guideline range  
25 remains the same. And so what we're asking the Court to do is

1 make specific findings that each enhancement was properly  
2 applied, but that even if the enhancements were not applied,  
3 the Defendant would still be at the same total offense level  
4 and that the Court would still sentence the Defendant to the  
5 same sentence, whatever that may be.

6 THE COURT: I have a question. When you fill out --  
7 ultimately after the sentence is pronounced, I fill out, or the  
8 Administrative Office of the Courts has the Judgment and  
9 Commitment form that has to be filled out, and it includes the  
10 findings on what a Defendant's offense level is. So is it -- I  
11 mean, the Government's position with the enhancements applying,  
12 the offense level Probation came up with is 58, and then you  
13 take away three levels for acceptance of responsibility since  
14 he entered into this plea agreement, which would take it down  
15 to a 55 -- I'm sorry; a 53. But the guidelines only go as high  
16 as offense level 43. So, is the Defendant's offense level  
17 under either scenario offense level 43?

18 MS. ONG: I think it becomes offense level 43, and  
19 that's because under the Guidelines, Chapter 5, Part A, the  
20 Comment Note 2 of the Guidelines basically states: "In the  
21 rare circumstances where the total offense level exceeds 43,  
22 the offense level becomes 43."

23 THE COURT: Becomes 43, okay. That's what I thought.  
24 I just wanted to make sure.

25 MS. ONG: Either way, we get to the same place. But

1 I do believe that it is important for the record that -- I  
2 believe that these enhancements were correctly applied, and I  
3 think it's worth noting that Defendant's total offense level,  
4 even after his acceptance, is 10 levels off the chart. And I  
5 think that further supports our request to the Court to  
6 ultimately sentence the Defendant to 120 years in this case.

7 So, that's all I have on --

8 THE COURT: That was another thing. Again, that's  
9 based on the statute; correct? Because typically the  
10 Guidelines would say life -- I mean, for all practical  
11 purposes, it's the same.

12 MS. ONG: That's correct, Your Honor. So whenever a  
13 defendant's guideline sentence is life and a statute doesn't  
14 explicitly allow for a life sentence, then what the Guidelines  
15 direct the Court to do is stack the counts and run them  
16 consecutive. And that's how we get to the 120 years in this  
17 case.

18 So, we do believe that both of those enhancements  
19 were properly applied. We'd ask the Court to overrule  
20 Defendant's objections.

21 Now, with regard to the restitution, what happened in  
22 this case, Your Honor, is I tried to reach out to every single  
23 attorney that is representing a known victim who has  
24 outstanding restitution requests. I don't believe that I spoke  
25 to every single one of them, but every single attorney that I

1 did speak to told me in light of the fact that we have live  
2 victims in this case, they were going to forgo their  
3 restitution requests, because they felt it more appropriate  
4 that the Court order restitution for the actual live victims in  
5 this case.

6 we have the burden of proving by a preponderance any  
7 type of restitution. I know that defense counsel brought up  
8 Paroline. Frankly, Paroline is inapplicable to this case.  
9 Paroline dealt with a situation where a Defendant possessed an  
10 image of a victim that he had absolutely no involvement in  
11 producing himself. Here, the Defendant actually produced well  
12 over -- I think according to his own statement, he approximated  
13 over 500 videos and images of these children. We know that  
14 they've been widely disseminated. They were ultimately found  
15 in another country. That's how this whole investigation  
16 started.

17 And so I don't think we have any issues of whether or  
18 not the Defendant proximately caused the harm to the victims in  
19 this case, and that's what Paroline dealt with, whether or not  
20 the Defendant who only possesses an image was the proximate  
21 cause; how much.

22 Now, with regard to the actual amount that we are  
23 asking for, M.M.'s adoptive parents are here, and I know that  
24 they're planning on addressing the Court. I think that they  
25 can speak to some of the medical issues that M.M. has had, to

1 some of the counseling that she's having to undergo, and there  
2 are factors that aren't even laid out in the CDC study that I  
3 think they're going to speak to the Court about.

4           Basically, because of this case, they're  
5 contemplating relocating out of the state of New Mexico in  
6 order to keep M.M. safe. Both of her adoptive parents are  
7 lifetime residents of this state, but because of everything  
8 they've had to deal with regarding this case, they're  
9 contemplating moving. And I don't believe that the actual  
10 number that we're asking for is speculative. The CDC study  
11 that's attached to our memorandum goes into a lot of detail  
12 about where those figures come from.

13           Now, Ms. Katze brought up, basically, a criminal  
14 justice cost. Okay, fine. Let's hope that neither of these  
15 victims ever have to deal with the criminal justice system, and  
16 let's take that number out of it. Then we're still looking at  
17 \$203,265. And basically, what that deals with are short-term  
18 health care costs, long-term health care costs, productivity  
19 losses, child welfare costs, and special education costs. I  
20 don't think you need an expert to get up and testify that  
21 because of the amount of abuse that these children have  
22 undergone, they're going to deal with every single one of those  
23 things. So this is actually a set figure. I think it's a  
24 conservative number.

25           The CDC study basically lays out that when it made



1 this determination, the median age they were dealing with of a  
2 victim was six years old. In this case, we're dealing with two  
3 toddlers who were two years old at the time that this happened.  
4 So I don't believe that that's a speculative number at all. I  
5 think that the Court can rely on the findings in this CDC study  
6 and also find that they apply directly to the victims in this  
7 case.

8           Now, under 18 U.S.C. 3664(d)(5), the Court actually  
9 has ninety days after a sentencing hearing to determine the  
10 issue of restitution. So if the Court feels that there is more  
11 information that needs to be supplemented into the record,  
12 we're happy to provide the Court with that. But I know that  
13 M.M.'s parents are going to speak not only to what they've been  
14 able to observe with M.M., but they actually early on had a lot  
15 of dealings with A.M., as well, and I believe that they're  
16 going to address those with the Court, what they were able to  
17 observe with regard to A.M. and his behavior and his foster  
18 care placement.

19           There is no doubt that both of these minors should  
20 be -- need counseling, and will continue to need that. One of  
21 the things that I expect the Court to hear about is that  
22 because of the long abuse that M.M. had to endure from the  
23 Defendant, she may not be able -- her reproductive organs may  
24 actually be permanently disfigured. So, I mean, even looking  
25 down the road, we can say, well, if she ever wants to adopt

1 children, that's a cost that was proximately caused by the  
2 Defendant's abuse in this case.

3           So it is difficult to ascertain these numbers.  
4 There's no magic number. But I think that this study goes into  
5 as much detail as we can possibly know about how much a victim  
6 of child abuse -- about the cost that they actually face. And  
7 I think that it's completely appropriate for the Court to rely  
8 on it and to find that the costs that are incurred in this  
9 study are costs that both A.M. and M.M. will endure for the  
10 rest of their life.

11           THE COURT: I was going to -- as I mentioned to  
12 Counsel earlier, I didn't start looking at this file until the  
13 weekend. Obviously this is a case, given the magnitude of it,  
14 that is going up to the Tenth Circuit. There's suppression  
15 issues. The ruling I made in denying the motion to suppress,  
16 that's going to be a part of the appeal. There's an issue on  
17 the enhancement, an issue of first impression in the Tenth  
18 Circuit, so I've got to rule on that. And the same with the  
19 restitution. So I'm going to hear today all the argument, I'm  
20 going to hear the victim impact statements, I'll hear -- all  
21 that will remain will be for me to pronounce sentence.

22           But I'll do a separate written on restitution. If I  
23 determine that -- clearly the Victim's Mandatory Restitution  
24 Act is applicable in this case, so I do have to rule on the  
25 restitution. If I feel that I need more -- as you alluded to,

1 I can keep it open for ninety days, so I'll do a request for  
2 supplemental briefing or authority if I determine I need it.

3 MS. ONG: And Your Honor, just to point this out,  
4 because I think defense counsel alluded to it, there have been  
5 no actual restitution requests from either M.M. or A.M. As I  
6 stated, M.M.'s adoptive parents are here, and I expect that  
7 you'll hear from them.

8 With regard to A.M., we have tried to reach out to  
9 the foster parents. We've been unable to get in contact with  
10 them. But I don't think that that precludes A.M. from being  
11 able to receive restitution in this case. The fact that his  
12 parents have not made a specific request for restitution  
13 doesn't mean that he's not entitled to it. So our position  
14 would be that given what's in the record in terms of the abuse,  
15 there's no doubt that the Defendant was the proximate cause of  
16 the abuse, that the Court can still order restitution for A.M.  
17 whether or not he's formally made a request for it.

18 THE COURT: I'll let you respond, Ms. Katze.

19 Are you done on the restitution issue?

20 MS. ONG: Yes, Your Honor.

21 THE COURT: Okay. Go ahead, Ms. Katze.

22 MS. KATZE: I just wanted to say one thing with  
23 respect to the restitution argument. The Government is saying  
24 that it's not speculative, but just saying it's not speculative  
25 doesn't make it not speculative. They still have given the

1 Court no facts upon which to base a restitution order. And a  
2 study is not victim specific enough.

3 I realize that obviously there may be some  
4 speculation, but I think it has to be based on something  
5 specific, and a current costs and a projection of that. So I  
6 just wanted to make that point.

7 Do you want me to now address --

8 THE COURT: Sure, let's go into -- we know in terms  
9 of the guideline sentence, whether the enhancements apply or  
10 not, the guideline sentence for the Defendant is life in  
11 prison. So let's go now to the next matters in your Sentencing  
12 Memorandum.

13 MS. KATZE: Okay. Thank you.

14 So, the Government is requesting a sentence of 120  
15 years, which as the Court pointed out is tantamount to a life  
16 sentence. I want to go over the reasons why I think the Court  
17 should consider giving a sentence less than life in prison.

18 One thing I'll just address first is our departure  
19 issues under §5K2.16, Disclosure not Motivated by Imminent  
20 Uncovering. Now, I recognize that this is maybe not a classic  
21 case that falls under this provision, because this isn't a  
22 situation where Mr. Blackburn came forward and reported his  
23 abuse. But I do think that this departure section still  
24 applies given what did happen in this case, how fully  
25 cooperative Mr. Blackburn was to the extent that he talked

1 about things that law enforcement did not know and would not  
2 have uncovered that then ended up being used against him as far  
3 as number of images, types of images.

4 Also, based on information that he gave them and his  
5 cooperation with letting them look at his electronics and  
6 identifying where some things came from, law enforcement was  
7 able to identify other people who were involved in the  
8 distribution of child pornography. Whether they followed up on  
9 that or what they did about it is another situation.

10 And I'm not suggesting that a §5K cooperation  
11 agreement applies, but I think that because of the fact that he  
12 was so forthcoming with that information -- and it was a lot of  
13 information that the Government didn't have, and because the  
14 children were so young, might never have had. Hopefully that's  
15 something that can be helpful to the Government and to law  
16 enforcement.

17 So apart from that, Your Honor, absolutely  
18 recognizing that this is just an absolutely horrible, horrific,  
19 heartbreaking case -- to even think of something like that  
20 being done to young children is without a doubt one of the most  
21 heartbreaking cases that we see, and I recognize that. But I  
22 think there still has to be a distinction between the  
23 heartbreak of this case, and a case where somebody is killed, a  
24 life is taken. There has to be a distinction between that  
25 conduct. And I think if there's not, then I think we create

1 something troubling or problematic as far as the message to  
2 people, as far as the deterrent effect. There becomes a lot  
3 less deterrent for other conduct if, in fact, this conduct is  
4 punished the same as an intentional killing.

5 I think if Congress had wanted this conduct, as  
6 horrible as it is, to be punished by a life sentence, Congress  
7 would have done so. But, in fact, none of the charges that  
8 Mr. Blackburn pled guilty to carried more than a 30-year  
9 mandatory sentence. And it is only because of combining the  
10 charges, even though it's all the same conduct, but combining  
11 them and stacking those charges that we would even come up to  
12 something that would come up to 120 years.

13 I also would add to that just the idea of the  
14 possibility of release. To give an individual, specifically  
15 Mr. Blackburn, something that he has to live for and a reason  
16 for him to try to reform his ways. I think in sentencing  
17 somebody to life, we take away the chance of rehabilitation and  
18 we take away the chance for somebody, too, to change their  
19 ways.

20 Also, you know, we have the battle of the studies.  
21 The Government provided a study that says one thing, and I  
22 found a study that I thought was very persuasive that showed  
23 that the recidivism rate among sex offenders actually decreases  
24 with age, and if the Court were to agree to give him a  
25 sentence, Mr. Blackburn a sentence of less than life, he would

1 still be a substantially older man when he got out of prison,  
2 and I think that the evidence is that sex offender recidivism  
3 and sex offender conduct does substantially decrease when we're  
4 talking about older individuals.

5           And I also think as far as the idea of the prospect  
6 of any release, even when he's an older man, if there's still a  
7 concern about the fact that he could still be a sex offender,  
8 obviously there's sex offender registration, there's lengthy,  
9 probably rest of his lifetime supervised release that he could  
10 be on. I think as I said in my Sentencing Memo, there are  
11 things that Probation could do to -- ways that they could  
12 fashion supervised release so that they would address any  
13 possible risk or danger to the community.

14           I think specifically in this case, Mr. Blackburn is  
15 30 years old, he has no prior criminal history, and there's no  
16 evidence that he's a predator, that he's a predator in search  
17 of children. This is particularly more situational. And under  
18 §4248, when Mr. Blackburn is released, if the Government  
19 believes that he is a dangerous sex offender, there are civil  
20 proceedings that are specifically in place to address that, to  
21 have a hearing to determine his dangerousness to be in the  
22 community. And if they can show at that time when he's an  
23 older man, and contrary to studies, that he still presents a  
24 serious danger to the community, he can be civilly committed.

25           It seems that it's more appropriate to make that

1 judgment that a man in his 60s or 70s is a danger when he's in  
2 his 60s or 70s. How we can say a man who is 30 and has no  
3 criminal history, that there's no way that he can be  
4 rehabilitated and that he can't have treatment, and that we  
5 can't find a way for him to be released, it doesn't seem fair.  
6 It doesn't seem appropriate. And §4248 would be the way to  
7 address that.

8 Now, kind of going backwards to talk about  
9 Mr. Blackburn's life, again, he had a horribly sad life of  
10 abuse and abandonment. And I don't share that with the Court  
11 as an excuse for what Mr. Blackburn did. It's not an excuse,  
12 and he doesn't see it as an excuse. But it is -- I think it  
13 gives maybe some insight, and I think that it's something that  
14 the Court needs to take into consideration when making a  
15 sentence that is sufficient, but not greater than necessary to  
16 accomplish the goals of §3553.

17 So, Mr. Blackburn lived with his biological mother  
18 until he was five years old. He never knew his biological  
19 father, but he knew that his biological father was an alcoholic  
20 and had served time in prison. His mother had a string of  
21 boyfriends, one of whom sexually abused him. When he was  
22 actually -- when he was born, his mother was using cocaine and  
23 marijuana.

24 So at the age of five, she just got rid of him.  
25 Literally got rid of him and gave him to her sister, who lived



1 in another state. So she completely abandoned him. So, first  
2 obviously abandoned by his father, and then completely  
3 abandoned by his mother who at this point never saw him again.

4 But before she got rid of him, she was extremely  
5 physically abusive towards him, and I laid out all those  
6 things. Burning him with a cigarette lighter, scraping his arm  
7 with a knife, pushing his hand in broken glass, hitting him  
8 with a belt, punching him, hitting him with an electric cord.  
9 And all of this is before he was five years old. And the  
10 sexual abuse by her boyfriend, all before he's five years old.

11 Now he gets just sent to his aunt's house, and  
12 unfortunately, to some degree, it kind of went from bad to  
13 worse. His aunt was extremely physically abusive to him.  
14 Lighting him on fire, hitting him, trying to drown him. And  
15 again he experiences sexual assault.

16 He gets removed from the house, and then he's in a  
17 residential treatment facility, in group homes and foster care,  
18 and they had literally minimal contact with him. Like the  
19 first few months that he's there, they had contact with him,  
20 and then she has a pass to pick him up on Christmas, and just  
21 doesn't show up. He's a young kid. The aunt calls up and  
22 explains that she's become pregnant by another man, and that  
23 she's going to go live with this other man, and she has  
24 absolutely nothing to do with Michael after that.

25 He tries to kill himself a number of times. Taking

1 rat poisoning, cutting himself, a number of suicide attempts.  
2 And that's by the time he's 13 years old. He's diagnosed with  
3 severe depression. At the age of 13, it's noted that he sees  
4 no reason to live at all.

5 He gets treatment. He's prescribed a number of  
6 medications for his depression, for anxiety. While he's in the  
7 residential treatment facility, he's found to be a slow  
8 learner; a learning disability. The Court knows from the  
9 suppression motion that he has trouble reading and processing  
10 quickly with a lot of external stimulation and people  
11 interrupting him. At the age of 14, he's found to have the  
12 language skills of an 8 year old.

13 And then there were issues where there would be the  
14 potential for him to be adopted. A man who the facility  
15 thought was actually his father and who described himself as  
16 his uncle came back into his life briefly and said he was going  
17 to adopt him, and that never happened.

18 And then finally, when he's 18 years old, he has to  
19 get put out of the residential treatment facility. He doesn't  
20 really have any skills, so to speak, to -- I mean, life skills,  
21 in general, and skills to support himself. And now he doesn't  
22 have insurance and he's not getting medication. So that's a  
23 little bit of a view on what Michael Blackburn's life was.

24 I think the Court knows how extremely remorseful and  
25 sorry Mr. Blackburn is. He, again, gave a very detailed

1 confession to law enforcement. He described himself as being  
2 evil and that he was glad that he had gotten caught and that he  
3 was stopped, because despite the abuse, he did care for the  
4 children.

5           And actually, some of the Government's witnesses  
6 specifically said in their statements that Michael -- even  
7 though living in the house were the two parents whose parental  
8 rights were terminated, who were obviously extremely neglectful  
9 of their children, the two parents were in the house, it was  
10 Michael Blackburn who was taking care of the children as far as  
11 feeding them and taking care of them. I'm not saying that he  
12 should get a reward for that, but I think the fact is that he  
13 did care for the children and does feel completely remorseful  
14 and horrible about the pain that he has caused them and what he  
15 did to their life.

16           I would ask the Court -- I have suggested in our  
17 Sentencing Memo that the Court could give Mr. Blackburn a  
18 lengthy period of time in prison, and I think that that would  
19 be appropriate to accomplish all the sentencing goals of §3553.

20           I know Mr. Blackburn wishes to address the Court. Do  
21 you want him to address the Court now?

22           THE COURT: why don't we wait and let him go at the  
23 end, and I'll give you and him the last word.

24           MS. KATZE: Okay. I just have two more things that I  
25 want to say, and I can bring it back up at the end.

1           He's asking for a recommendation to be able to serve  
2 his sentence at FCI Tucson, or another facility that has a  
3 sexual offender dedicated wing/program/treatment. And then  
4 here's --

5           THE COURT: Is FCI Tucson one where sex offenders --

6           MS. KATZE: I believe there is a program there.

7           MS. DAY: We have several different lists, Your  
8 Honor, I apologize.

9           THE COURT: That's fine. We can come back to that.  
10 You can go ahead and look.

11           MS. DAY: Thank you.

12           MS. KATZE: The last thing that I wanted to say, you  
13 know, is when it comes to child sex abuse, I think we all want  
14 to know, how does it happen? Why does somebody do something  
15 like that? It's so horrible. Is there a way that we can  
16 understand how that happened so that maybe we can figure out  
17 how to prevent it in the future, or intervene? You know, what  
18 do we do?

19           I think that very few studies really get to talk to  
20 and look at somebody who has sexually abused children, and for  
21 what it's worth, Mr. Blackburn is willing to participate in a  
22 study, or be the subject of a study. He's very -- you know,  
23 he's open and he's willing to talk and help. Because he said,  
24 if there's anything he could do -- he knows he can't undo what  
25 he did to those children, but if there's anything that he could

1 do to help people figure out why this happened. And it may not  
2 be a universal thing, but if in studying him and what he did  
3 would in any way help us figure out how this happens, why this  
4 happens, and what we can do, he's willing to do that.

5 THE COURT: Okay.

6 MS. ONG: Your Honor, first I want to just briefly  
7 address defense counsel's argument for a departure under  
8 §5K2.16. I don't believe a departure is warranted, and this is  
9 why. That provision explicitly states: "This provision does  
10 not apply where the motivating factor is the defendant's  
11 knowledge that discovery of the offense is likely or imminent,  
12 or where the defendant's disclosure occurs in connection with  
13 the investigation or prosecution of the defendant for a related  
14 conduct."

15 That's exactly the situation we have here.  
16 Mr. Blackburn did not walk into the police department and turn  
17 himself in. Law enforcement showed up at his door. At that  
18 point, he knew the jig was up, and so he agreed to talk to them  
19 and tell them what they were going to find anyway. What was  
20 uncovered on his phone and on the computer, what was recovered  
21 in his e-mails, frankly, we would have found that whether  
22 Mr. Blackburn had told us about it or not. So I don't believe  
23 that a departure is warranted under that provision.

24 I want to just quickly address a few of the arguments  
25 that defense counsel made, and then I want to turn it over to

1 M.M.'s parents, because I think that they can give the Court an  
2 idea of what Defendant's conduct really did in this case much  
3 better than I'm able to do.

4 But first of all, I think defense counsel brought up  
5 the fact that if the Defendant was supposed to receive a life  
6 sentence, that the statute would call for it. Well, §2251, the  
7 statute of conviction, does allow for a life sentence, and  
8 that's basically if the Defendant has two prior convictions.

9 In this case, we know that Defendant assaulted and  
10 filmed these children over 500 times. So just because he  
11 hadn't been caught before, I think that his conduct still falls  
12 within that realm. The unit of prosecution for a production  
13 case, it's one video. Here we know that he did this at least  
14 500 times. So I think that even Congress -- you know, the fact  
15 that if you have two prior convictions, in that instance the  
16 Court is allowed to actually impose a life sentence, supports  
17 our request for a 120-year sentence in this case.

18 Defense counsel tried to argue that there's no  
19 evidence that Mr. Blackburn is a predator. That kind of blew  
20 my mind, because I think everything in this case says the  
21 contrary. What Mr. Blackburn told us in his interview is that  
22 he couldn't control himself. We know that he abused at least  
23 one other child when he was a teenager. We know from the  
24 suppression hearing that he was at least threatening to abuse  
25 his own son. I would redirect the Court to Exhibits 31 through

1 35 that were introduced at the suppression hearing. Those are  
2 basically e-mails from the Defendant to the mother of his child  
3 where he's basically making threats that he would abuse his own  
4 son if he had the opportunity.

5 So he's absolutely a predator, and if he has an  
6 opportunity to abuse a child again, there's no doubt that he'll  
7 take it. I don't think that he can control himself, and that's  
8 what he told law enforcement himself.

9 Now, of course how he got to that point, there's no  
10 doubt that there had to be some bad stuff that happened to him  
11 in his early childhood, but what the Court should be concerned  
12 about now is protecting the public from Defendant's future  
13 crimes.

14 The Court is well aware of the egregious facts of  
15 this case. I'm not going to sit here and recount them. The  
16 Court sat through a two-day suppression hearing. I think that  
17 the PSR, Paragraphs 13 through 39, clearly lay out the offense  
18 conduct. I address some of it in my brief.

19 The one thing I can say is, you know, I've worked on  
20 these child exploitation cases for five years now, and today I  
21 actually have hope, and that's because of M.M.'s foster  
22 parents. Ms. Henderson and I have had the opportunity to sit  
23 down and talk to them, and they truly are angels among us.

24 what they do is, they basically take in high-risk  
25 foster children and provide a home for them. And I think that

1 they'll touch on this a little bit, but basically, in this  
2 case, they received M.M. right away, right after the abuse, and  
3 that's not typically what happens. Usually a child goes to one  
4 foster care parent, and then when that's not working out,  
5 they're kind of the last resort.

6           So I think that they can tell you that in comparison  
7 to some of the other children that they've had to foster, M.M.  
8 was in the worst condition that a child could be, which is  
9 exactly what you would expect. I think that they're going to  
10 tell you a little bit about what they had to undergo in the  
11 early days of caring for her, what they still have to deal with  
12 today, but if that little girl has a chance, it's with them.  
13 So that's definitely a good thing. I'm so happy that people  
14 like them exist.

15           But that should not discount from what the Defendant  
16 did in this case. He is absolutely a danger. And one of the  
17 main reasons why we're asking -- well, we believe all the §3553  
18 factors support a sentence of 120 years, and I clearly laid  
19 that out in my Sentencing Memorandum, but I don't want M.M.'s  
20 parents to ever have to worry about Mr. Blackburn again. I  
21 want them to know that he's put away for good, and they can  
22 move on with their lives. And I think given everything that  
23 M.M. had to endure, everything that A.M. had to endure, that's  
24 what the child victims in this case deserve. And if ever there  
25 was a case where an effective life sentence was warranted, this



1 is it.

2 I don't believe that there are any mitigating factors  
3 strong enough to support the Court varying or departing, and we  
4 are asking the Court to impose a 120-year sentence. You know,  
5 the fact that Defendant is sorry, frankly it's just not enough.

6 So I'd like to give, now, M.M.'s parents an  
7 opportunity to speak. And just so the Court is aware, in order  
8 to protect the identity of M.M., I'm not going to have the  
9 Court actually put their names in the public record. They're  
10 concerned about people finding out who they are. I can tell  
11 you that they've actually legally changed M.M.'s name, and so  
12 for that reason, we're just going to refer to them as M.M.'s  
13 adoptive parents, if the Court is all right with that.

14 THE COURT: Sure.

15 MS. DAY: Your Honor, Tucson does have a residential  
16 program for sex offenders.

17 THE COURT: It does?

18 MS. DAY: Yes.

19 THE COURT: Okay.

20 MS. ONG: Your Honor, before they speak, they  
21 actually brought a picture that they wanted me to show you.  
22 I've showed it to defense counsel. And so if you're all right,  
23 I'll just furnish it to the Court now.

24 THE COURT: Yes. You all may proceed.

25 MRS. K.S.: Good afternoon, Your Honor. Never in my

1 wildest dreams did I ever imagine I'd be standing in front of a  
2 Federal Judge. Never in all my life did I ever imagine that I  
3 would be adopting a child.

4           On December 17th, we were called and asked if we  
5 could take a child on emergency. We were told that this child  
6 was probably a feral child. As standard practice in our  
7 family, seeing as I do have other children in the home, we  
8 always have a family meeting to make sure that that is okay.  
9 we usually have a few days to make a decision, a few days to  
10 read over the file, a few days to make sure that it's an  
11 appropriate fit for us. We did not have that that day. I  
12 talked to my children briefly, and they said, absolutely, go  
13 get her.

14           I went down to CYFD by myself. He had to stay home  
15 with our kids. I saw A.M. being taken out with his foster  
16 parents, who I know, and he was very distraught, very checked  
17 out, very disassociated, not knowing what was going on. It was  
18 the most heartbreaking thing I'd ever seen, I thought.

19           About 30 minutes later, here comes this beautiful  
20 girl in the same manner. She was almost three years old and  
21 had no vocabulary. She couldn't talk. She had no idea who I  
22 was, whether I was safe, whether I was going to harm her, feed  
23 her, nothing.

24           We drove home that day, and she was so exhausted,  
25 like I've never seen a child. We didn't even make it out of

1 the parking lot -- she was crying and crying, but was not  
2 asking for anyone. Just crying. Most kids that we get ask for  
3 mom and dad, foster parents, anyone that's taken care of them.  
4 This little girl had no one to cry for, except for her brother.  
5 She fell asleep before we ever got to the interstate.

6 I took her home and I fed her. It was like the first  
7 meal she'd ever had. She did not know how to sit at a table.  
8 She did not know how to use utensils. She did not know how to  
9 use the restroom. She could not communicate in a strange home  
10 with us. It was a very long few days.

11 She could not use the bathroom, because she was so  
12 damaged. Some of this my husband does not know. I took a lot  
13 of this on because it's very hard for a man to understand, let  
14 alone any of us. But to be firsthand victims, we were. We  
15 were impacted as much as M.M. was.

16 Over the next couple of weeks, I had to take her to  
17 the doctor twice because she could not urinate from the damage.  
18 I had to sit with her and help her so that she could urinate on  
19 her own. She had to go in the bathtub, or wherever. I was  
20 told at that time that she may not be able to have kids. I  
21 just thought how horrific that is. How horrific. I was told  
22 that, too, but I was blessed with two biological children. I  
23 can't imagine the pain that she may go through.

24 After that, we began intensive therapy, intensive  
25 visits. We did sibling visits. We did sibling counseling. We

1 even had A.M. in our house numerous times to try to integrate  
2 them together as siblings. It was very evident from the  
3 beginning that they could not be siblings. They acted out.  
4 They hurt each other. They would try to sexually pose  
5 themselves with each other. We could not even use a cellphone.  
6 They didn't know what a cellphone was, except to take pictures.  
7 If a cellphone was seen, they would start posing and wanting to  
8 take their clothes off. If we were in public, they would want  
9 to do that. It was evident that the damage was so more than we  
10 could ever imagine.

11           Therapy. Lots of reading, which you could tell she  
12 had not been read to. The Defendant said that he took care of  
13 them. I disagree with that. I do not believe he ever read a  
14 book to them. I do not believe he ever played ball with them,  
15 let alone did a puzzle with them, because M.M. had no idea how  
16 to do that, and neither did A.M. We had to teach them basic  
17 childhood things that they should have already known prior to  
18 coming into my house. All the other children that I've had  
19 that have been in horrific circumstances come knowing the  
20 basics. They did not.

21           M.M. began to slowly vocalize. M.M. started -- they  
22 said that, you know, they didn't go to anyone, tell anyone what  
23 was happening. Well, M.M. had no vocabulary at almost three.  
24 She had 15 words that you couldn't even understand. So she  
25 didn't have a voice until we taught her words. Then she

1 started making the disclosures, and believe me, she would talk  
2 freely. And the horrific, horrific things that came out of  
3 her, I never imagined in all my life to hear.

4 But I want to share one thing that I think was the  
5 most important thing for me to hear from her. It was the  
6 hardest thing I ever heard. I was rocking her before bedtime,  
7 and she started crying. I asked her why, and she said: "All  
8 those times I cried, and I begged and I begged for my brother  
9 to help me, and he wouldn't." well, how could her two-year-old  
10 be her shining armor? At two years old, she wanted him to be  
11 her protector. She's 11 months older than him. That's the  
12 only person she had. The only person. Mr. Blackburn did not  
13 take care of those children. I don't care what they said. She  
14 would not have been crying for her brother to take care of her.

15 You know, she talks about not wanting to take his  
16 life away from him. well, unfortunately, he's already taken  
17 away two lives. These children will have to be monitored for  
18 the rest of their lives. I refer to keeping M.M. in a bubble.  
19 She will not be allowed to do normal functioning things like  
20 other children. She cannot. She is at high risk for this type  
21 of thing to happen again. She knows no boundaries. She was  
22 not taught boundaries because of the horrific things that were  
23 done to her and her brother.

24 we talk about restitution. You know, we're all  
25 speculating. Every day I wake up and I wonder what my day's

1 going to bring. Last night it brought me a full night of sleep  
2 in a week. why? Because M.M. has nightmares numerous times.

3 As far as restitution, there's no way of putting a  
4 dollar figure on it. I would like the money to be used to make  
5 sure that she is educated to help out other children, to make  
6 sure that if she needs to be in a smaller class because she's  
7 not doing well in a class of 20, 25 or 30, I can get her the  
8 education that she needs to be a better person, to be able to  
9 sustain a life as an adult. We all wonder if that will be  
10 possible. None of us will know. I may not even know.

11 I hope that you do give him a 120-year sentence. I  
12 do need to know he is locked up forever. I need to know that,  
13 because at my age, I never expected to be a parent of a child  
14 again. My children are almost grown, as you can tell. My  
15 children are stepping into our shoes. That was a decision that  
16 we made when adoption came about. It was nothing we took  
17 lightly. My children said: "If anything happens to you, Mom  
18 or Dad, we are here."

19 I cannot leave any more pressure on my children to  
20 know that he may be released in 30 or 40 years, and that my  
21 children will have to step up and take the place of me. I  
22 cannot do that. It's not fair to them, and it's not fair to  
23 M.M.

24 As far as being reformed, I don't believe that he can  
25 be. I think that he will always be a predator and be unsafe

1 for us in society. He is a predator. He is a predator. I  
2 also am -- he can still do those things behind bars and be an  
3 advocate as a remorse. He can continue to do that. It doesn't  
4 matter if he has a chance of coming out or not, those are  
5 things that he should do anyway to be remorseful for this. It  
6 should not impact the sentence at all.

7           Again, I don't know what all you would like to hear  
8 from me, because this is three years of a horrific nightmare, a  
9 horrific nightmare, and it's ongoing to this day. Poor M.M.  
10 has so much anxiety, her mind is like racing through a freeway  
11 constantly. We try to take her to an appropriate-aged movie,  
12 and she can't even sustain an hour-and-a-half to watch a Disney  
13 movie because her anxiety is so sky high. Her eating habits  
14 are still so sky high. I hear the defense say that he fed  
15 them, and I'm not so sure that he fed them appropriately, or if  
16 he didn't make them perform to get food, because eating is a  
17 horrific part of our day. Constantly begging for food, needing  
18 to make sure she's going to have food without being told that  
19 she had to do something.

20           There are so many things. Ongoing therapy for our  
21 family, for her, for us. There are so many impacts of this,  
22 and day by day we have to take it. Today so far is a good day,  
23 but I haven't picked her up from school. I work hand-in-hand  
24 with the school. I cannot be employed because I never know  
25 when that phone is going to ring for me to come and get her.

1 She cannot sustain the day at school. For me to be here this  
2 afternoon with him is so hard because if anything happens at  
3 school, where do we go? There's not us for backup.

4 I just wish that I could speak so much more clearer  
5 to you so that you could have an understanding. A.M. and M.M.  
6 will never be able to have a relationship. Ever. And to me,  
7 that's horrific, too, to not have your sibling. But we don't  
8 feel it will ever be in the best interests of the children.

9 (A discussion was held off the record.)

10 MRS. K.S.: She's asking us to talk about what it's  
11 like to have them together. We would try playgrounds, and A.M.  
12 would knock her off the swing set. A.M. would grab her around  
13 the neck and throw her down. His aggressions were so sky high.  
14 I worry for him in the future. I'm not so sure that he's not  
15 going to be in the court system later in life. I pray that he  
16 can find peace in him to do that.

17 When they were together, they had nightmares. A.M.  
18 constantly would wake up during the night -- this is reported  
19 through meetings we were in with the other foster parents. He  
20 would wake up terrified. Michael's going to come get you and  
21 me and he's going to hurt us. Michael is going to kill you.  
22 Michael is going to hurt me. He even became very adamant about  
23 the things that he would do sexually once he also learned how  
24 to talk. These children had no voices to talk when we got  
25 them. Again, just huge, huge violence from A.M.



1 M.M. was definitely a victim, and she would be timid,  
2 and she would tuck herself away so that she didn't have to deal  
3 with it. They would check out. I've heard of it. I've had  
4 training about how they check out and disassociate, but until  
5 you see a child of two or three disassociate because you were  
6 changing their diaper and doing a basic need for them, you can  
7 never understand it.

8 A.M. used to just scream when I would have to change  
9 his diaper. Scream, as if I was causing horrific pain to him.  
10 This happened numerous times, and I finally had to say that I  
11 just -- it was not in the best interests of the children to be  
12 together, that A.M. was not welcome to stay in our home. It  
13 was not in the best interests of M.M. or A.M.

14 It's not in the best interests of the children to be  
15 triggered by each other. After we would have visits, the  
16 nightmares would be the most horrific. The behaviors at school  
17 would be the most horrific. The yelling at me would be  
18 horrific. The sometimes hitting. A.M. is definitely a lot  
19 more violent than M.M., and I think that is going to be M.M.'s  
20 saving grace, is that she can find, somewhat, calmness. I  
21 don't know how well it's going to sustain her in her adulthood,  
22 but all I can say is that every day, once we get up, it is a  
23 challenge to get to the end of the day, and it is an even  
24 bigger challenge to get through the night.

25 A.M., we have not seen him in probably a year, and

1 M.M. does still ask about him. And I do have to tell her why,  
2 and that's a very hard thing to say. Very hard thing. We use  
3 pictures, we talk frankly, we talk appropriately, but to truly  
4 understand why she can't be with the one person that she felt  
5 could protect her, and did protect her at times.

6 A.M. also has horrific eating habits. A.M. also has  
7 huge post-traumatic stress, as does M.M. The eating issues,  
8 they're very much parallel, both of them. When we would go  
9 into meetings and kind of compare notes, even to the times they  
10 woke at night, they were very parallel. It was almost eerie,  
11 as if they were twins, and they're not. They're 11 months  
12 apart.

13 MR. K.S.: The screaming at night.

14 MRS. K.S.: Yes, the screening at night, the times  
15 waking up at night, the same type of allegations were coming  
16 out of both of our mouths at the same time.

17 So it was definitely nothing we had ever encountered  
18 firsthand. It's definitely, for the agency that we were with,  
19 very rare for them to take a child so victimized right out of  
20 the home. And it was a really tough case for all of us at the  
21 agency, and it continues to still be.

22 THE COURT: Is M.M. -- is there still CYFD? Are they  
23 still involved with M.M.?

24 MRS. K.S.: Not with CYFD, no, Your Honor. We have  
25 adopted her. But we will have ongoing therapy for the rest of

1 her life. And again, ongoing therapy for us, ongoing therapy  
2 for our family as needed.

3 THE COURT: A.M., is he in a stable foster placement?

4 MRS. K.S.: In my opinion, Your Honor?

5 THE COURT: In other words, is he so difficult where  
6 they're having to rotate him around?

7 MRS. K.S.: I do not feel he is in the best  
8 placement, no. I feel that he is going to have a much tougher  
9 life in a lot of ways.

10 THE COURT: Sir, is there anything that you wanted to  
11 say?

12 MR. K.S.: All I can say is the nightmares, the  
13 sounds of the screaming, I've never heard like that before.  
14 It's just a horrific, horrific sound.

15 MRS. K.S.: And almost three years later, they're  
16 still not going away. The anxiety that she leave our side is  
17 horrific. To go to the grocery store without her is hard.

18 And she touched base that we want to move, because we  
19 never know who we're going to encounter that may recognize her.  
20 we know it's been three years, but you see she definitely  
21 stands out. There are family members around that we don't  
22 know. We never know when someone could be around that might  
23 recognize her.

24 And unfortunately, that's going to go anywhere where  
25 we go, because of social media and the internet. And we

1 already know that, you know, this is ongoing, this is being  
2 distributed now, and it will never end. You know, we always  
3 told our children that once you put something on the internet,  
4 you can't take it back. We always believed that. But never in  
5 our wildest dreams did we understand that, until now. Those  
6 images are never going away. Those 500 plus images are not  
7 going away. Another reason why he cannot be released.

8 THE COURT: Well, thank you. Anything else?

9 MR. K.S.: No. Just thank you for letting us  
10 approach you.

11 MRS. K.S.: Thank you.

12 THE COURT: Thank you. Thank you for being there for  
13 the child.

14 MS. ONG: And Your Honor, the picture that I provided  
15 is actually a picture from the adoption that they had.

16 THE COURT: I recognize Judge Parnall.

17 Is there anything else that the United States wants  
18 to present?

19 MS. ONG: Your Honor, there was one thing that I  
20 wanted to say that I forgot to say.

21 Defense counsel basically said that a life sentence  
22 should be reserved only for someone who has taken another  
23 person's life. To me, I'm more worried about Mr. Blackburn  
24 being back out on the streets than I would be about someone who  
25 has committed a murder. What he did effectively was take away

1 those two children's lives, so I think that he is much more of  
2 a danger, and I think that this Court should impose a 120-year  
3 sentence.

4 And also, I think there was a couple of references  
5 where M.M.'s mother was speaking and she kind of let slip some  
6 of the minors' names. I would just ask that in the record,  
7 that they be documented as M.M. and A.M., and their first names  
8 not be used.

9 THE COURT: Sure. I'll instruct the Court Reporter  
10 that if a transcript is made of this proceeding, that the  
11 children's names just be referred to by their initials.

12 MS. ONG: And then just one more thing. With regard  
13 to the Defendant's placement, M.M.'s parents did tell me that  
14 they have a lot of family in Arizona, and they're not  
15 comfortable with the Defendant being placed in Arizona, so they  
16 would object to that placement.

17 THE COURT: Well, ultimately it will be for the  
18 Federal Bureau of Prisons to designate.

19 MS. HENDERSON: I apologize, Your Honor. One of the  
20 things that was noted is that one of the family members is  
21 actually a corrections officer in Arizona, and so they're  
22 actually concerned about actual familial contact with him in  
23 corrections.

24 THE COURT: Okay. Ms. Katze.

25 MS. KATZE: Your Honor, we would still ask that the

1 Court make a recommendation to FCI Tucson. It sounds like  
2 Probation has confirmed that there is a sex offender program  
3 there, and Mr. Blackburn would like to briefly address the  
4 Court.

5 THE DEFENDANT: I just want to thank you for whatever  
6 you do give me, because I know you're going to give me a very  
7 deserving sentence. No matter if it's life, or if it's what my  
8 attorney is asking for, I accept it, because I realize what  
9 I've done is very horrific. I can't fix what I've destroyed,  
10 but I feel that I can change it by continuing to take  
11 responsibility for these evil acts that I've done, and by  
12 continuing to change the evil within me through my personal  
13 relationship with Jesus Christ, our Lord and Savior.

14 Like Ms. Katze said, I had a rough upcoming. But I  
15 don't hold that anymore. I've forgiven that person for what  
16 they have done to me. I've forgiven my mother, I've forgiven  
17 my Aunt, because that's what my religion believes I should do.  
18 And that's the only way I have peace in my heart.

19 On a more positive note, I've graduated high school.  
20 I've attended Job Corp. in Morganfield, Kentucky. I got my  
21 plumbing apprenticeship, and I attended an Advanced Technology  
22 Institute in Norfolk, Virginia, where I obtained my CDL Class A  
23 and drove tractor-trailers for companies.

24 No matter what the sentencing is, some of my biggest  
25 goals are to lose the weight, because I know the only way to

1 change this evil stuff is to change appearance in and out to  
2 where I feel better, because I know that's one of the main  
3 steps that causes a person like me to do better, or do worse.  
4 And I want to do better. Even if I'm locked away for the rest  
5 of my life, I want to help people not do this again, because it  
6 is the worst thing that can happen.

7 Can I have one moment, please?

8 (A discussion was held off the record.)

9 THE DEFENDANT: Basically, if I do get 504 months, a  
10 few things that I have as a goal, which is far-fetched, I know,  
11 is working in the oil fields or the automotive industry, or  
12 even owning a restaurant.

13 So, I thank you for your time and for giving me a  
14 chance to say my peace.

15 THE COURT: Certainly.

16 Is there anything else, Ms. Katze, from the defense?

17 MS. KATZE: Your Honor, I think that's it. I think  
18 that we've made our record with respect to the restitution  
19 issue and what the objections to restitution are, what the  
20 statute specifically allows the Court to issue restitution for.  
21 So, yes, that's it.

22 THE COURT: Anything else from the United States?

23 MS. ONG: Not from the United States, Your Honor.

24 THE COURT: Okay. What I'm going to do is, I'll  
25 issue a written decision on the findings that I'm required to

1 make, and then what will be left is for me to pronounce  
2 sentence.

3           Once those orders come out, contact Mr. Garcia and  
4 find -- I'm sorry. It's Ms. Ong now; right?

5           MS. ONG: Correct, Ms. Ong.

6           THE COURT: Ms. Ong, if you would talk to the child's  
7 adoptive parents and find out when it would be convenient for  
8 them to be present, and if it's convenient for counsel, then  
9 I'll set the time, and then I'll go ahead and pronounce  
10 sentence at that time.

11           All right, thank you. We'll be in recess.

12 (Proceedings adjourned at 3:06 P.M.)

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3  
4 UNITED STATES OF AMERICA, )

5 Plaintiff, )

6 vs. )

7 MICHAEL DAMEON BLACKBURN, )

8 Defendant. )

No. 14-CR-00129 WJ

SENTENCING HEARING, PART 1

9  
10 CERTIFICATE OF OFFICIAL COURT REPORTER

11 I, Mary K. Loughran, CRR, RPR, New Mexico CCR #65, Federal  
12 Official Realtime Court Reporter, in and for the United States  
13 District Court for the District of New Mexico, do hereby  
14 certify that pursuant to Section 753, Title 28, United States  
15 Code, that the foregoing is a true and correct transcript of  
16 the stenographically reported proceedings held in the  
17 above-entitled matter on Monday, August 29, 2016, and that the  
18 transcript page format is in conformance with the regulations  
19 of the Judicial Conference of the United States.

20 Dated this 7th day of August, 2017.

21  
22  
23 MARY K. LOUGHRAN, CRR, RPR, NM CCR #65  
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